IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.941 OF 2007.

Smt Sumati Raghunath Joshi & Anr. ...Appellants

Versus

Shri Dattatraya Gopal Parit-Raut & Ors. ...Respondents

Shri Rupesh Bobade for the Appellants.

CORAM : ABHAY S.OKA, J.
DATED : 06th December, 2007.

P.C.:

1. Heard learned advocate appearing for the appellants. The appellants are the original plaintiffs who filed a suit for possession of immovable property. The trial Court decreed the suit for possession. The trial Court also granted the decree of perpetual injunction. In appeal preferred by the respondents-defendants, the decree for perpetual injunction has been set aside but the decree for possession in favour of the appellants has been maintained.

2. The submission of the learned advocate for the appellants is that both the courts below have committed an error by not passing a decree for mesne profit even after holding that the possession of the respondents was illegal and unauthorised. He submitted that therefore

the courts below have committed a gross error.

3. I have carefully considered the submissions. The trial Court has not framed any issue regarding entitlement of the appellants to mense profit. The trial Court has not passed a decree regarding mense profit. The decree of the trial Court was challenged by the respondents-defendants. Perusal of the judgment of the Appellate Court shows that there was neither any cross-appeal nor any cross-objection filed by the appellants for challenging that part of decree by which the decree of mense profits was denied by the trial Court. In paragraph No.6 of the judgment of the Appellate Court, the submissions made by the advocate appearing for the appellants have been reproduced in detail. There is nothing to show that this issue was agitated by the appellant before the Appellate Court. In view of this factual position, now the appellants cannot agitate the issue of mense profit. Only on this ground the Second Appeal is dismissed with no orders as to costs.

JUDGE